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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/433,646	05/04/95	FAHIM R	MIS/MS-1038-

18M1/0401

SIM & MCBURNEY
330 UNIVERSITY AVENUE
SUITE 701
TORNOTO ON M5G 1R7
CANADA

EXAMINER	
PRICKRIL,B	
ART UNIT	**PAPER NUMBER**
1817	6

AIR MAIL

DATE MAILED: 04/01/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary	Application No. 08/433,646	Applicant(s) Fahim et al.
	Examiner Benet Prickril	Group Art Unit 1817

☒ Responsive to communication(s) filed on *Dec 30, 1996*.

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1, 3, 5, 7, and 10-17* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1, 3, 5, 7, and 10-17* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Election/Restriction

1. Claims 18-37 were orally elected with traverse and withdrawn from further consideration by the examiner in the last Office action (paper 4) as being drawn to a nonelected invention. Applicants have canceled nonelected claims 18-37 and have not set forth arguments traversing this election. Therefore the requirement is still deemed proper and is made final.

2. Claims 1, 3, 5, 7, and 10-17 are pending in this Office action. Claims 2, 4, 6, 8, 9 and 18-37 have been canceled.

Response to Amendment

3. Claim 10 as amended is nonresponsive because "%" is missing after "wt." in line 4, while it is present in the original claim. In the interest of compact prosecution claim 10 will be examined, for this Office action only, as if "%" were present at the stated position in the claim as amended.

4. The rejection of claim 13 under 35 U.S.C. § 112, second paragraph is maintained for the reasons stated in the last Office action (paper 4). Applicant's arguments have been considered but are not persuasive. The trademark SEPHADEX should be capitalized in the claim in order to prevent its use in a manner which might adversely affect its validity as a trademark. See M.P.E.P. § 608.01(v).

5. Claims 1, 3, 5, 7, and 10-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites a preparation which is "substantially" free from agglutinogen 1. However, the term "substantially" is renders the claim indefinite as to a) whether agglutinogen 1 is in fact present, and b) what amounts of agglutinogen 1 can be present and still not infringe the claim, i.e., what amounts define the metes and bounds of the claim.

6. The rejection of claims 1, 3, 5, 7, 12-14 and 17 under 35 U.S.C. § 103 over Fredricksen et al. in view of Jackson et al. is withdrawn in light of the claim amendments.

7.

8. The rejection of claims 10 and 11 under 35 U.S.C. § 103 over Fredricksen et al. in view of Jackson et al. and further in view of Gotto is maintained and extended to claims 1, 3, 5, 7, 12-14 and 17. Contrary to applicant's assertions the procedure of Fredericksen et al. would have resulted in a combination of agglutinogens 2 and 3 because the procedure is essentially identical to applicant's procedure as outlined in the last Office action. As to the absence of agglutinogen 1, this is not a requirement of the instant claims reciting preparations "substantially free" of this component. With respect to the use of urea, it remains the position of the examiner that the prior art procedure employing acetone extraction is functionally equivalent, and therefore within the level of ordinary skill in the art. The heat treatment procedure of Fredericksen et al. is equivalent

to that of applicants in that a the methods are substantively the same in view of the similar temperatures employed, the limitation of "about" occurs in applicant's claims, and purpose for which this step is employed are identical. Other steps of the prior art procedures parallel those of applicants for the reasons cited in the last Office action.

9. The rejection of claims 15 and 16 under 35 U.S.C. § 103 over Fredricksen et al. in view of Jackson et al. and further in view of Kieff et al. is maintained for the reasons cited in the previous Office action. Applicants assert that this rejection should fall in view of their demonstration of the patentability of claim 1 over the prior art. However, the rejection of claim 1 over the prior art has been maintained, and therefore claims 15 and 16 remain rejected.

10. No claims are allowed.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

General information regarding further correspondence

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1817.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benet Prickril, Ph.D., whose telephone number is (703) 305-5933. The examiner normally can be reached Monday through Thursday between 7:30 AM and 5:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Hutzell, Ph.D., can be reached at (703)308-4310. The fax phone number for Art Unit 1817 is (703) 305-7939.

Any inquiry of a general nature, or relating to the status of this application, should be directed to the Group receptionist whose telephone number is (703) 308-0196.

PAULA K. HUTZELL
SUPERVISORY PATENT EXAMINER
GROUP 1800
3/31/97

Benet Prickril, Ph.D.
March 28, 1997